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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,894	06/01/2006	Katri Keski-Nisula	LMI001.820714	7027

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WOLF BLOCK SCHORR AND SOLIS-COHEN LLP
250 PARK AVENUE
NEW YORK, NY 10177

EXAMINER

PATEL, YOGESH P

ART UNIT	PAPER NUMBER
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3732

NOTIFICATION DATE	DELIVERY MODE
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03/05/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO@WOLFBLOCK.COM
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Office Action Summary	Application No. 10/563,894	Applicant(s) KESKI-NISULA ET AL.	
	Examiner YOGESH PATEL	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-27 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 10, 13-17, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen (4,784,605) in view of Cathcart et al. (2,966,908).

Bergersen discloses an orthodontic device (as in previous rejection) for guiding the occlusion of an individual, the device including a generally U-shaped arch made of flexible material (col. 3, lines 13-16) and that has a lower surface on the lower jaw side and an upper surface on the upper jaw side, and in both of which there are concaves for receiving the individual's teeth (col. 2, lines 35-40), the bottoms of the concaves forming an isthmus which separates the concaves from one another, wherein the isthmus includes blanks intended for individual teeth and uniform, continuous recesses (e.g. trough) for at least two teeth to guide the teeth in the desired direction. Bergersen fails to disclose a lower wing reaching the immediate proximity of the mouth cavity, extending lower than the corresponding outer wall, shape of lower arch, reducing the at point of the ligament of the tongue and outer wall on the upper jaw side surface partially continued upwards. Cathcart teaches a mouth protector (fig. 9) including a wing 7 reaching the immediate proximity of the mouth cavity, extending lower than the

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corresponding outer wall, shape of arch, reducing the at point of the ligament of the tongue and outer wall on the upper jaw side surface partially continued upwards.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Bergersen by providing the lower wing as claimed as taught by Cathcart in order to provide full protection of teeth of a user. With respect to the specifics of the lower wing, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to make the device in a specific range as claimed, since it has been held that discovering the optimum or workable ranges involves only routine skills in the art. In re Aller, 105 USPQ 233. Furthermore, such range would vary among users (e.g. children vs. adults), thus applying appropriate range to the device would be obvious to one having ordinary skills in the art.

The examiner notices that the device is intended for guiding an occlusion of an individual. With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over the prior art of record which is capable of being used as claimed if one so desires to do so. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 7-9 and 18-23, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen in view of Cathcart et al. as applied to claim 1 above, and further in view of Bergersen (5,645,420).

Bergersen'605/Cathcart disclose all elements of the claimed invention, and further disclose different size ranges (Bergersen, col. 2, lines 38-40) except for a thickness of the isthmus and the dimensions of the device. Bergersen '420 teaches the variation of the isthmus thickness for the correction of the overbite can be accomplished either by reducing the thickness in the area of the posterior teeth or increasing the thickness in the area of the anterior teeth (col. 6-7). Similarly, by increasing the thickness of the isthmus in the posterior region relative to the anterior region, an open bite can be corrected. The variation in thickness of the isthmus occurs in step because the thickness is different in anterior and posterior portions. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Bergersen/Cathcart by providing a varying thickness of the isthmus of the device as taught by Bergersen'420 in order to correct open bite/overbite problems (col. 6, lines 49-67 and col. 7, lines 19-42). Regarding the dimensions of the appliance, the dental structure of users (e.g. dentition) varies in sizes depending on particular users' age. For example, if the user is 15 years old, then the length of the compartment would be lesser than the compartment length for user that is older than specified age and vice versa. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Bergersen/Cathcart by providing the appliance in variety of sizes (e.g. as claimed) so that large group of users may benefit

from correcting open-bite tendencies and tongue thrust problems and/or to protect teeth using the appliance.

Response to Arguments

Applicant's arguments filed 12/22/2008 have been fully considered but they are not persuasive. Applicant argues that Cathcart discloses no intention or goal that the mouth protector could be used for correcting the bite of an individual. As explained above, Applicant has not positively claimed the device specifically being used for correcting bite of an individual. Regarding the walls 7 and 8 of Cathcart, it could be modified by a person of ordinary skill if one desires to do so.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOGESH PATEL whose telephone number is (571)270-3646. The examiner can normally be reached on 8:00 to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YOGESH PATEL/
Examiner, Art Unit 3732

/Ralph A. Lewis/
Primary Examiner, Art Unit 3732